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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,926

08/20/2003

James Rudolf Meyer

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01/10/2007

OLIFF & BERRIDGE, PLC

P.O. BOX 19928

ALEXANDRIA, VA 22320

EXAMINER

GORDON, BRIAN R

ART UNIT

PAPER NUMBER

1743

MAIL DATE

DELIVERY MODE

01/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/643,926	Applicant(s) MEYER ET AL.	
	Examiner Brian R. Gordon	Art Unit 1743	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1 and 3-5.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

BRIAN R. GORDON
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant asserts the prior art fails to teach a probe wash reservoir located beneath a carriage tray and a wash location of the storage well, the movable support being movable, in the absence of a storage well, to bring the aspirator probe into the probe wash reservoir, as positively recited in claim 1. It should be noted, the examiner asserts positively reciting an element within the claim does not translate into positively claiming an element as an element of the invention. Applicant's claim remains unclear. The preamble of the claim states a module for washing an assay device located within an assay device storage well. The phrase expresses the intended use of the claimed module. The phrase does not automatically translate into one considering the module as comprising an assay device storage well. If applicant intends for such storage well to be considered as an element the module it should be positively listed as an element following the transitional phrase, "comprising". The examiner interprets the claim as a module including wash and aspirator probes mounted (structurally connected) to a movable support. The aspirator probe being mounted and moveable at an angle to a vertical axis of the support. Applicant has simply changed the word "whereby" to "wherein". The wherein clause provides a narrative of how one intends for the aspirator probe to interact with a storage well that is also not considered to be claimed as an element of the module. It is further unclear if such storage well is intended be the same as the "an assay device storage well" mentioned in the preamble. Citing how one intends for an element to function with an unclaimed element is not considered structurally limiting, but providing narrative information. Lastly the module is considered to positively claim a probe wash reservoir. While the claim states such reservoir is located beneath a carriage tray and wash location of the storage well, the carriage tray is not considered an element of the module for it is not positively listed as such. The "a carriage" could possibly be an element separate from the module but yet used with module in a system or specific process. As previously stated the storage well is not positively claimed as element of the module therefore any further structural recitations directed to such storage are also not considered further limiting. Furthermore the phrase directed to movement of the support in relationship to the unclaimed storage well is not further limiting. The phrase is not directed to any additional structure, but is narrative to provide a conditional phrase that appears to be based on what happens in a process of use. The presence or absence of the unclaimed storage well does not change the structure of the positively claimed elements. While narrative phrases are permitted, all of the positively claimed elements should be referenced in relationship to other positively claimed elements. In view of such, applicant's arguments are not commensurate in scope with that of the claim. Furthermore the claim remains unclear. The examiner hereby maintains the previous art rejections.



BRIAN R. GORDON
PRIMARY EXAMINER